IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16392 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KUNVARBEN, W/O. BANSI LAXMAN CHHARA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 16392 of 2003

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

Ms P B Sheth, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 06/04/2004

ORAL JUDGEMENT

The petitioner has filed this petition under

under Article 226 of the Constitution of India for appropriate writ, order or direction for quashing and setting aside an order dated 3.11.2003 passed by respondent No.2 under section 3(2) of the Gujarat Prevention of Anti-social Activities Act, 1985 (for short, 'the PASA Act') directing detention of the present petitioner on the grounds stated in the detention order.

2. It was alleged against the petitioner that four cases of prohibition under sections 65 and 66 of the Bombay Prohibition Act, 1949 were registered before Sardarnagar police station CR Nos. 5170/03, Prohibition police station, North wing CR No.1958/03 and 1959/03. On the strength of the aforesaid registered offence, the detention order was passed against the petitioner.

3. Feeling aggrieved by the order of detention, the petitioner has preferred this petition stating that apart from the aforesaid registered offence, no other material was available with the detaining authority. Simply case of three offence under the Bombay Prohibition Act, 1949 have been registered against the petitioner, the petitioner could not be treated to be a bootlegger, whose activities would lead to a threat to public order or public health. That therefore, the order of detention is illegal and deserves to be set aside. The petitioner has, therefore, prayed that the present petition be allowed and the order of detention be set aside.

4. On receipt of the petition, rule was issued and in response to the service of notice of rule, Ms P B Sheth, learned AGP appears on behalf of the respondents.

5. During the course of hearing, learned Advocate for the petitioner has contended that though three offences under the Bombay Prohibition Act have been registered against the petitioner, it cannot be said that the registration of the said offences amount to a threat to public order or public health. Learned AGP has relied upon a decision of Kanuji Zala v. State of Gujarat, 2000(4) GLR 3256 in order to argue that the registration of prohibition offences would lead to a threat to public health.

6. Again this decision was considered by this Court (Coram: Hon'ble Mr Justice N G Nandi) in Special C.A. No.16542/2003 dated 26.2.2004 wherein it has been clearly laid down that before coming to a finding that the alleged bootlegging activities of the petitioner would

lead to a threat to public health, there must be credible material before the detaining authority for coming to the said finding. In the present case, we find that the detaining authority did not have credible materials and, therefore, the order of detention could not have been passed against the petitioner.

7. Therefore, on the aforesaid strength of registration of three prohibition offences, the petitioner could not be treated to be a bootlegger whose activities were likely to be said to be a threat to public order or public health.

8. For the foregoing reasons, this petition is allowed. The impugned order dated 3.11.2003 passed by respondent No.2 is ordered to be quashed and set aside. The detenu is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute to the aforesaid extent. No order as to costs. D.S. permitted.

[D P Buch, J.]

msp